



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Storage Technology Corporation

**File:** B-235308

**Date:** May 23, 1989

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### DIGEST

Protester may not be awarded the costs of filing and pursuing protest, including attorneys' fees, where protest is academic because agency, shortly after filing of protest, took action to satisfy the protester's complaint and thus no decision on the merits of the protest is issued.

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### DECISION

Storage Technology Corporation protests the award of a firm, fixed-price contract to Sorbus, Inc., under request for proposals No. F08650-88-R-0040, issued by the Department of the Air Force. Storage, the apparent low-priced offeror, asserts that the award to Sorbus on the basis of its initial offer without discussions violates the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. IV 1986), which allows acceptance of an initial proposal without discussions where the award would result in the lowest overall cost to the government. The protest was filed with our Office on April 25, 1989.

By letter of May 8, 1989, the protester advised us that the Air Force notified the firm on May 4 that it had decided to sustain the protest at the contract activity level and conduct discussions with the protester and all offerors within the competitive range. The Air Force has similarly advised us of this action, and Storage states that it concurs in the agency's actions. Under the circumstances, Storage's protest is academic. Associated Professional Enterprises, Inc., B-231766, Oct. 12, 88-2 CPD ¶ 343.

Storage has also requested payment of its costs of filing and pursuing the protest, including attorneys' fees. Storage advises that it has incurred \$6,000 in attorneys' fees and associated costs. Storage recognizes that our Office repeatedly has held that a protester may not be awarded its protest costs where a protest is academic and

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we do not issue a decision on the merits. See, e.g., Teknion, Inc.--Claim for Protest Costs, 67 Comp. Gen. 607 (1988), 88-2 CPD ¶ 213. However, Storage contends that this case is distinguishable from Teknion because the Air Force acknowledges that it sustained the protest on the basis of a violation of statute. Storage asserts that this agency "admission" provides a basis for our Office to determine that the award did not comply with statute or regulation which is the prerequisite for our award of protest costs. See CICA, 31 U.S.C. § 3554(c)(1) (Supp. IV 1986).

Whether or not the agency's determination to conduct discussions in this case can be regarded as an admission of a statutory violation, we note that the agency, shortly after receipt of the protest, took action to satisfy the protester's complaint and included the protester's proposal in the competitive range. Under these circumstances, we do not think that award of protest costs is appropriate.<sup>1/</sup>

We dismiss the protest and deny the claim.



James F. Hinchman  
General Counsel

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<sup>1/</sup> As Storage notes, we recently published in the Federal Register (see 54 Fed. Reg. 14351 (1989)) a notice announcing a review of our protest regulations and inviting the public to comment on how we might improve the protest process. As part of that review, we will consider comments pertaining to the award of costs.